

**REMARKS**

The specification have been amended to correct matters of form and one or more typographical errors. It is respectfully submitted that no new matter has been introduced.

Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Claim 2 has been amended to make explicit that which was implicit in the originally filed Claim 2, thereby not affecting the scope of Claim 2.

Claims 1-10 are now pending in this application. Claims 1, 9, and 10 are the independent claims.

**I. The Objection to the Title of the Specification**

In the Office Action, the Title of the Specification was objected to as not descriptive. The Title has been amended herein to match the preamble of the pending claims. Therefore, Applicants respectfully submit that any grounds for this objection have been removed, and respectfully request acknowledgment thereof.

**II. The Objection to the Body of the Specification**

In the Office Action, the body of the Specification was objected to because of a misspelled word. The Specification has been amended herein to correct the misspelling. Therefore, Applicants respectfully submit that any grounds for this objection have been removed, and respectfully request acknowledgment thereof.

**III. The Objection to Claim 2**

Claim 2 was objected to for unclearly relating to Claim 1. Claim 1 recites “using the box score and the difference score to obtain **an effectiveness score**”. Claim 2 recites “The method of claim 1, further comprising evaluating the survey question based on **the effectiveness score**”.

Thus, Claim 2 is clearly related to Claim 1. Therefore, Applicants respectfully submit that there are no grounds for this objection, and respectfully request acknowledgment thereof.

#### IV. The Anticipation Rejection

Claims 1-6 and 8-10 were rejected as anticipated under 35 U.S.C. §102(b). In support of the rejection, Trindade (“Survey Data: Use of Scatter Plots for Displaying Scale and Consistency Factors”, 1995) was cited. This rejection is respectfully traversed.

Trindade fails to establish a prima facie case of anticipation. See MPEP 2131. To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, \_\_\_\_ (Fed. Cir. Jan. 6, 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”)

As explained at MPEP 2111.01, the words of a claim must be given their plain meaning **unless** they are defined in the specification. Here, the claim terms “box score”, “difference score”, and “effectiveness score” clearly have been defined in the specification, and those definitions must control examination of those claims that recite these terms.

Specifically, claims 1, 9, and 10, from one of which claims 2-8 depend, recite “calculating a **box score** and a **difference score**” and “using the box score and the difference score to obtain an **effectiveness score**”. Pages 10 and 11 of the Specification define how to calculate a “box score”, a “difference score”, and a “Babbitt score” (which page 46, lines 22-23 explains is the same as an “effectiveness score”). Specifically, the calculation of a top “box score” is defined as “(top box response percent + bottom box response percent – x) \* 100”, where x equals “ideal response distribution for a ‘neutral/no opinion’”. The calculation of a “difference score” is defined as “(top box response percent - bottom box response percent) \* 100”. The calculation of an “effectiveness score” is defined as top “box score + difference score”.

Trindade does not teach or suggest, expressly or inherently, “calculating a **box score** and a **difference score**” and “using the box score and the difference score to obtain an **effectiveness score**”. Accordingly, it is respectfully submitted that the rejection of claims 1, 9, and 10 is unsupported by Trindade and should be withdrawn. Also, the rejection of claims 2-6 and 8, each ultimately depending from independent claim 1, is unsupported by Trindade and also should be withdrawn.

## V. The Obviousness Rejection

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Trindade (“Survey Data: Use of Scatter Plots for Displaying Scale and Consistency Factors”, 1995) in view of Johnson (“Effects of Question Context and Response Order on Attitude Questions”, 1998).

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally,

the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP § 2143.

As described above, Trindade does not teach or suggest, expressly or inherently, "calculating a box score and a difference score" and "using the box score and the difference score to obtain an effectiveness score". Johnson does not cure the deficiencies of Trindade. Thus, assuming *arguendo* that the cited references are combinable (an assumption with which Applicant does not agree), the cited references do not expressly or inherently teach or suggest **every** limitation of claim 7.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

**CONCLUSION**

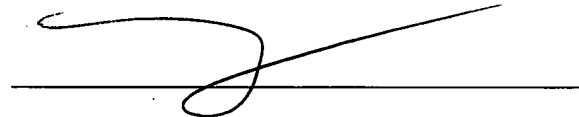
It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

Date: 19 July 2004

A handwritten signature in black ink, appearing to read 'Michael N. Haynes', is written over a horizontal line.

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